

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 21, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES E. G.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 2:20-CV-118-RMP

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING AMENDED
COMPLAINT

BEFORE THE COURT is the Report and Recommendation issued by United States Magistrate Judge Mary K. Dimke on August 25, 2021, ECF No. 12, recommending that the Court dismiss without further leave to amend Plaintiff James G.'s¹ Amended Complaint, ECF No. 11. Objections were due on September 8, 2021, with none received. However, Plaintiff filed an unauthorized "Second Amended Complaint" on September 7, 2021. ECF No. 14.

¹ The Court uses Plaintiff's first name and last initial to protect his privacy.

1 Plaintiff asserts in his most recent-filed document that he exhausted
2 administrative remedies, and requests that this Court “stay” the dismissal of this case
3 “pending any/all lower court S.S.I. related issues, as it obviously appears, that
4 without this courts ‘observation’ that they will continue to blatantly ‘screw me’
5 without basis[.]” ECF No. 14 at 4.

6 While the Court empathizes with Plaintiff’s predicament, this Court may not
7 exercise jurisdiction until after the Commissioner of Social Security renders a final
8 decision after a hearing. *See* ECF No. 12 (citing 42 U.S.C. § 405(g)). Plaintiff’s
9 assertion that he exhausted administrative remedies is conclusory and not supported
10 by specific allegations. Without jurisdiction, this Court cannot retain this case while
11 Plaintiff pursues any other relief. The Court joins the Magistrate Judge in
12 encouraging Plaintiff to seek assistance from any community-based resource
13 available to him. *See* ECF No. 12 at 8 (providing information about the “SOAR
14 Across Washington” resource).

15 Accordingly, after reviewing the Report and Recommendation and relevant
16 authorities, the Court finds that the Magistrate Judge’s determinations are correct.
17 However, the Court clarifies that, in adopting the Magistrate Judge’s conclusion that
18 the Court lacks jurisdiction to hear Plaintiff’s claims because he did not exhaust
19 administrative remedies, dismissal shall be without prejudice. *See Tijerino v.*

1 *Stetson Desert Project, LLC*, 934 F.3d 968, 971 n.2 (9th Cir. 2019) (“[I]n general,
2 dismissal for lack of subject matter jurisdiction should be without prejudice.”).

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. The Report and Recommendation, **ECF No. 12**, is **ADOPTED** in its
5 entirety.

6 2. Plaintiff’s Amended Complaint, ECF No. 11, is **DISMISSED**
7 **WITHOUT PREJUDICE** and **WITHOUT LEAVE TO AMEND**
8 because further amendment would be futile.

9 3. To the extent that a certificate of appealability (“COA”) is required to
10 appeal the dismissal of this action, the Court denies a COA.

11 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
12 Order, provide a copy of this Order and ECF No. 12 to Plaintiff at his last known
13 address and counsel for the Commissioner, if any, and **close this case**.

14 **DATED** September 21, 2021.

15 _____
16 *s/ Rosanna Malouf Peterson*
17 ROSANNA MALOUF PETERSON
18 United States District Judge
19
20
21